

## Message Text

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PAGE 01 BERN 02318 190838Z

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ACTION EB-11

INFO OCT-01 EUR-25 ISO-00 FTC-01 L-03 COME-00 JUSE-00

TRSE-00 CIAE-00 DODE-00 INR-10 NSAE-00 PA-04 RSC-01

USIA-15 PRS-01 SP-03 /075 W  
----- 074519

P 181650Z JUN 74

FM AMEMBASSY BERN

TO SECSTATE WASHDC PRIORITY 9174

INFO AMCONSUL ZURICH

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E.O. 11652: N/A

TAGS: ETRD, US, SZ

SUBJECT: FTC/NESTLE ANTITRUST CASE

REF: A) STATE 126210; B) BERN 2283

1. EMBOFF REVIEWED REFTTEL A WITH AMBASSADOR JACOBI OF SWISS DIVISION OF COMMERCE JUNE 18. JACOBI EMPHASIZED THAT GOS POLICY IS NOT REPEAT NOT TO INTERFERE IN INTERNAL US LEGAL OR PROCDURAL MATTERS BUT IT HAS BEEN CONCERNED RE FTC INVESTIGATION OF NESTLE ACQUISITIONS BECAUSE OF EFFECT ON INTERNATIONAL POLITICAL QUESTIONS AND INVESTMENT FLOWS. IN ADDITION, GOS WAS CONCERNED THAT FTC INVESTIGATION OF NESTLE ACQUISITION OF LIBBY WAS "CLEARED" WITH JUSTICE AND INDIRECTLY WITH FTC BEFORE TRANSACTION COMPLETED IN 1970. GOS CONTINUES TO BELIEVE THAT INVESTIGATION HAS BEEN LENGTHY BUT IS NOW CONCERNED THAT STAFF RECOMMENDATION MIGHT BE FORMULATED WITHOUT OPPORTUNITY REVIEW FULL DOCUMENTATION WHICH NESTLE IS SUBMITTING, PARTICULARLY ON MORE RECENT ACQUISITION OF STOUFFER. JACOBI ACKNOWLEDGED THAT THERE HAS UNDOUBTEDLY BEEN SOME LACK OF COMMUNICATION BETWEEN MANY PARTIES INTERESTED IN FTC INVESTIGATION BUT REITERATED THAT GOS FULLY UNDERSTANDS AND RESPECTS USG  
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PAGE 02 BERN 02318 190838Z

OBLIGATION TO INTERPRET ITS LAWS.

2. JACOBI ALSO PROVIDED EMBOFF WITH COPY JUNE 10 MEMORANDUM SIGNED BY LIOTARD-VOGT, CHAIRMAN, AND GURLEY, GENERAL COUNSEL, OF NESTLE WHICH SWISS EMBASSY WASHINGTON WILL IN NEAR FUTURE PRESENT TO DEPARTMENT WITH REQUEST IT BE FORWARDED TO FTC. JACOBI EMPHASIZED THAT THIS MEMORANDUM WAS ENTIRELY RESPONSIBILITY OF NESTLE AND THAT GOS WAS MERELY PROVIDING MEANS OF TRANSMISSION. HE ALSO NOTED THAT DOCUMENTS RESPONSIVE TO FTC INQUIRY WILL CONTINUE TO BE SUPPLIED TO FTC THROUGH WASHINGTON ATTORNEYS FOR NESTLE.

3. FOLLOWING IS BRIEF SUMMARY OF NESTLE MEMORANDUM. NESTLE LEARNED RECENTLY FROM GOS SOURCES IN BERN THAT FTC STAFF EXPECTED MAKE RECOMMENDATION IN NEAR FUTURE CONCERNING LIBBY ACQUISITION. NESTLE ALSO LEARNED THAT FTC STAFF APPARENTLY CONSIDERED IT IN NON-COMPLIANCE IN SUBMITTING ALL REQUESTED INFORMATION. NESTLE'S WASHINGTON ATTORNEYS HAD ASKED STATE DEPARTMENT TO INQUIRE OF FTC STAFF AS TO WHETHER RECOMMENDATION WOULD ALSO COVER STOUFFER MATTER. NESTLE TAKES POSITION THAT NOVEMBER 29, 1973, LETTER FROM PETER WARD MAKES CLEAR THAT "BEFORE WE CAN MAKE APPROPRIATE RECOMMENDATION TO COMMISSION IN THESE MATTERS IT IS NECESSARY THAT WE HAVE ANSWERS TO THE SUPPLEMENTARY QUESTIONS SET FORTH BELOW." NESTLE MEMORANDUM THEN REVIEWS NESTLE'S EFFORTS COMPLY WITH INFORMATION REQUESTS AND DIFFICULTIES IN DOING SO. MEMORANDUM STATES THAT "ADDITIONAL MATERIALS ARE BEING SUBMITTED AT FREQUENT INTERVALS AT THE PRESENT TIME" AND THAT OTHERS WILL BE SUBMITTED AS SOON AS FEASIBLE. NESTLE CONCLUDES BY EXPRESSING HOPE THAT NO RECOMMENDATION WILL BE FORMULATED BY FTC STAFF WITH RESPECT TO STOUFFER ACQUISITION UNTIL NESTLE'S AND LIBBY'S RESPONSES HAVE BEEN FULLY CONSIDERED. NESLE ALSO URGES THAT CONGRESSIONAL OR CONSUMER GROUP DEMANDS THAT FTC "DO SOMETHING" ABOUT US FOOD INDUSTRY SHOULD NOT BE PERMITTED INFLUENCE JUDGMENT WHETHER NESTLE'S ACQUISITIONS ARE LIKELY SUBSTANTIALLY TO LESSEN COMPETITION.

4. AMBASSADOR SENDING COPY NESTLE MEMORANDUM TO FTC  
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PAGE 03 BERN 02318 190838Z

CHAIRMAN ENGMAN.  
DAVIS

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NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** BUSINESS MERGERS, COURTS, INVESTIGATIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 18 JUN 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** WorrelSW  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1974BERN02318  
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**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
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**Review Action:** RELEASED, APPROVED  
**Review Authority:** WorrelSW  
**Review Comment:** n/a  
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**Review Date:** 17 JUN 2002  
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**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
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**Status:** NATIVE  
**Subject:** FTC/NESTLE ANTITRUST CASE  
**TAGS:** ETRD, US, SZ, FTC, NESTLE  
**To:** STATE  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005